

REMARKS

Claims 133-188 were pending in the Application prior to the outstanding Office Action. With this Amendment, claims 133-145, 147, 149-173 and 180-188 are canceled, claims 146 and 174 are amended, and claims 189-196 are added. With this amendment, claims 146, 148, 174-179 and 189-196 are now in the case.

Rejection of Claims 134, 136, 142, 176 and 177 under 35 U.S.C. §112

The Examiner has rejected claims 134, 136, 142, 176 and 177 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Of these claims, only 176 and 177 remain pending.

Claim 176 was rejected based on an alleged indefiniteness of canceled claim 134 that relates to where the customized audio data product is produced. Claim 176 recites a process step of storing the hearing profile at a remote site. Thus, the Examiner's rejection seems to be a mistake, and reconsideration is requested.

Claim 177 was rejected based on an alleged indefiniteness of canceled claim 136 that relates to where the hearing profile is stored. Claim 177 recites a process step relating to where the customized audio data product is produced. Thus, the Examiner's rejection seems to be a mistake, and reconsideration is requested.

Rejection of Claims 133-147, 149-154, 157-169, 172-178 and 180-188 under 35 U.S.C. §102(e)

The Examiner has rejected claims 133-147, 149-154, 157-169, 172-178 and 180-188 under 35 U.S.C. §102(e) as being anticipated by Campbell (6212496). Applicant maintains independent claim 146 and claim 147 that depends therefrom, and independent claim 174 and claims 175-178 which depend therefrom, in this rejected group. The other claims are canceled without prejudice.

Independent claim 146 is amended for clarity, to recite that the device comprises a headset and headset mounted resources, and to recite a computer program "to communicate with an external data processing device providing a user interface supporting an interactive process to provide the hearing profile." This feature is supported in the application as filed, including by the descriptions of Fig. 10 and Fig. 23.

The Campbell reference describes a cellular phone which executes a process for setting user parameters, using resources available on the phone. See, column 5, lines 60 et seq. The cellular phone of Campbell does not constitute a headset, does not provide a hearing profile using resources on the phone to interact with a remote user interface, and does not include the features recited in claim 146.

Likewise, claim 174 is amended for clarity and to recite coupling the headset “via a communication medium to an external data processor having a user interface.” Thus, like claim 146, the claim includes using a headset and headset mounted resources to interact with a remote user interface. There is no similar process described in Campbell.

Accordingly, reconsideration is requested.

Rejection of Claims 156, 171 and 179 under 35 U.S.C. §103(a)

The Examiner has rejected claims 156, 171 and 179 under 35 U.S.C. §103(a) as being unpatentable over Campbell in view of Jigour (5815426). Of these claims, claim 179 is pending. Claim 179 depends from claim 174 as amended, and is patentable for at least the same reasons.

Furthermore, the combination of Campbell and Jigour shows a cell phone with a memory card. It does not show a headset with a memory card storing an audio data product customized using a hearing profile. Accordingly, the *prima facie* case for unpatentability is incomplete for this additional reason.

Accordingly, reconsideration is requested.

Rejection of Claim 148, 155 and 170 under 35 U.S.C. §103(a)

The Examiner has rejected claims 148, 155 and 170 under 35 U.S.C. §103(a) as being unpatentable over Campbell in view of Adams (6594366). Of these, claim 148, which depends from claim 146, remains pending. Claim 148 is therefore allowable for at least the same reasons as claim 146.

Adams shows a basic headset technology. There is no suggestion whatsoever in the record for combining hearing personalization with a headset like that of Adams. The Examiner asserts that it would be obvious to combine Adams’ stereo headset with Campbell’s phone, “in order to allow the device to support audio and hardware meant for stereo sound.” This rationale is not related to the claims at issue, which require communication between headset-mounted

resources and an external data processing device providing a user interface supporting an interactive process to provide the hearing profile. Campbell describes a telephone with resources for adapting the phone for processing telephone calls. If one combined Campbell with Adams, the personalization remains on the phone, and not on the headset, and no technology for personalizing a headset would arise.

The Examiner's rationale is also flawed because there is no reason for reproducing telephone calls in stereo as this rationale suggests. Clearly, the Examiner is suggesting this combination based on hindsight, after having seen the present application.

The present invention extends personalized audio to a new class of playback device and process, supporting personalized playback on a headset designed for playback of entertainment audio and other audio delivered to a headset. A headset typically does not include processing resources and user interface resources sufficient to support interactive processes for providing hearing personalization.

The extension of personalization to a headset is not obvious from the telephone industry technology used to provide specialized service for hearing impaired people. Rather, it represents a departure from traditional thinking about hearing impairment and is not known from the prior art. Once the headset is personalized as taught herein, it could be used for connection with a computer, a television, a stereo and other devices. The personalized headset becomes the center or the "hub" of a personalized audio system "wheel", independent from any particular one of the audio sources on the spokes. As suggested by Campbell and other telephone system audio, one could personalize his/her cell phone, but when the user picks up another phone, that phone won't be personalized. When one personalizes the headset and uses it with different phones, personalization carries across audio sources.

Accordingly, reconsideration is requested.

New Claims 189-196

New claims 189-192, dependent from apparatus claim 146, and similar claims 193-196, dependent from method claim 174, are added to recite additional, patentably distinct, features of the headset personalization technology claimed herein. These claims are described in the original specification in the text describing Figs. 22 and 23 (page 23, lines 1-27) for example, and further with reference to Figs. 10, 11, 14-18.

CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. If the Examiner believes a telephone conference would aid the prosecution of this case in any way, please call the undersigned at (650) 712-0340.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (RXSD 1001-3).

Respectfully submitted,

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